

## REMARKS

Upon entry of the present amendment, claim 1 will be amended to even more explicitly recite that the cosmetic preparation composition includes at least two surfactants from sodium lauryl sarcosinate, sodium monoalkyl phosphate, disodium lauryl sulfosuccinate, disodium cocoyl glutamate,  $\alpha$ -olefin sulfonate and lauryl glucoside with a total surfactant concentration of the composition being 3 to 15 % by weight. Moreover, an extraneous comma has been removed from claim 1.

Claims 21-23 will be added, with support for the newly-added claims being present throughout the originally filed application, including the last full paragraph on page 4.

Reconsideration of the rejections of record and allowance of the application in view of the following remarks are respectfully requested.

### **Claim of Foreign Priority**

Applicant expresses appreciation for the acknowledgement of the claim of foreign priority. **However, Applicant requests that the next communication from the Patent and Trademark Office include the complete indication that the certified copy of the priority application has been received in this national stage application.**

### **Information Disclosure Statement**

Applicant also expresses appreciation for the Examiner's confirmation of consideration of Applicant's Information Disclosure Statement, filed December 21, 2005, by including an initialed copy of the Form PTO-1449 with the Office Action.

However, the Examiner has crossed through DE 102 16 502 without any explanation as to why the document has been crossed through. In this regard, DE 102 16 502 has been accompanied by family member WO 03/084501 which includes an English language abstract, and the Examiner has indicated consideration of this family member document.

Accordingly, Applicant submits another copy of the Form PTO-1449, and requests that a completely initialed copy of the form be included with the next communication from the Patent and Trademark Office.

### **Response To Rejection Under 35 U.S.C. 112, Second Paragraph**

In response to the rejection of claims 1-3, 10 and 11 under 35 U.S.C. 112, second paragraph, as being indefinite, Applicant submits the following.

The rejection notes that there are different types of transitional claim language, and that the phrase “group consisting of” is a closed term, which is often used in claim drafting to signal a Markush group that is by its nature closed.

In response, Applicant notes that there are different types of transitional claim language, and that the phrase “group consisting of” is a closed term, which is often used in claim drafting to signal a Markush group that is by its nature closed. However, Applicant is not using Markush language in the claims, and is using open claim language.

Moreover, the rejection does not indicate why the claims are considered to be indefinite, and is therefore without appropriate basis. In this regard, Applicant submits that the claims are definite and are in compliance with 35 U.S.C. 112, second paragraph, so that the rejection of record should be withdrawn.

Accordingly, withdrawal of the rejection is requested.

**Response To Art-Based And Double Patenting Rejections**

The following rejections are set forth in the Office Action.

(a) Claims 1-4, 6-13, 17, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,668,422 to Malik et al. (hereinafter “Malik”) in view of EP 0 559 375 to Hagan et al. (hereinafter “Hagan”).

(b) Claims 1, 2, 4, 5, 8 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,668,422 to Malik in view of EP 0 559 375 to Hagan, and further in view of U.S. Patent No. 5,883,059 to Furman et al. (hereinafter “Furman”).

(c) Claims 1, 2 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,668,422 to Malik in view of EP 0 559 375 to Hagan, and further in view of U.S. Patent No. 6,641,825 to Scholz et al. (hereinafter “Scholz”).

Initially, Applicant notes that the rejection references Example 15 of Malik as being close to that recited by Applicant. However, the referenced Example 15 of Malik includes as active ingredients, sodium alpha olefin sulfonate 8 wt%, sodium lauryl sarcosinate 3 wt%, cocoamido monoethanol amine 3 wt%, octadecyl maltoside (D.P. = 2) 3 wt%, ammonium chloride 2 wt%, and water 81 wt%.

Therefore, the embodiment that is referenced in the rejection as being close to Applicants’ recited subject matter includes a total surfactant concentration of 17 wt%. In contrast, Applicant’s claimed subject matter includes a total surfactant concentration of the composition of 3 to 15 % by weight. Accordingly, Malik does not teach or suggest a composition as recited in Applicant’s claim 1, and further defined in Applicant’s dependent claims.

Moreover, the rejection references column 2, lines 58-62 of Malik as well as claims 1, 3, 8-9 and 11.

However, column 2, lines 58-62, of Malik discloses, “It has now been discovered that nonionic glycoside surfactants, when properly formulated with certain other ingredients as hereinafter discussed, are eminently well suited for use in liquid hand-soap and bubble bath compositions.” (Emphasis added.) Following this disclosure of properly formulated compositions, Malik discloses that there is provided in accordance with his invention a liquid detergent composition which is suitable for use as a liquid hand-soap or bubble bath product and which comprises, on a total composition weight basis:

- a. from about 3 to about 30 weight percent of a glycoside surfactant;
- b. from about 1 to about 20 percent of a nonionic foam boosting surfactant, said foam boosting surfactant constituting about 50 weight percent or less of the total surfactant content of said composition; and
- c. up to about 95 weight percent water.

Malik discloses, beginning at column 3, line 15, that, “An especially preferred embodiment hereof is one in which an amphoteric surfactant is employed as the aforementioned auxiliary surfactant and wherein the resulting detergent composition is substantially free of anionic surfactant ingredients (e.g. which contains less than about 2, preferably less than about 1, weight percent of an anionic surfactant on a total composition weight basis). Unlike presently available commercial liquid hand-soaps which employ anionic surfactant materials and which typically require the use of moisturizing additives or ingredients, the compositions of this latter, especially preferred embodiment do not contain an anionic surfactant ingredient and do not require the use of moisturizing ingredients or additives.”

Therefore, one having ordinary skill in the art would not have been motivated to vary the compositions of Malik, and it would appear that any experiments, if made, would be limited.

Moreover, each of the Examples of Malik appears to have a total surfactant concentration higher than Applicant's recited 15 wt% total surfactant concentration.

For the reasons that will be further set forth below, Applicant submits that one having ordinary skill in the art would not have combined Malik and Hagan. However, even if for the sake of argument the disclosures were combined, any such combination of Malik and Hagan would not arrive at Applicant's recited composition which includes a composition containing at least two surfactants from sodium lauryl sarcosinate, sodium monoalkyl phosphate, disodium lauryl sulfosuccinate, disodium cocoyl glutamate,  $\alpha$ -olefin sulfonate and lauryl glucoside with a total surfactant concentration of the composition being 3 to 15 % by weight; (b) at least one hydrocolloid in a total concentration of 0.05 to 1 % by weight; and (c) at least one water-soluble salt in a concentration of 1 to 4 % by weight, respectively based on the total weight of the preparation composition.

For example, Hagan is directed to a cleansing composition which comprises, in addition to water, (a) from 10 to 30% by weight of one or more C<sub>6</sub> to C<sub>16</sub> acyl lactylates and (b) 5 to 25% by weight of one or more co-surfactant, such as acyl taurates, isetionates, sarcosinates and sulphosuccinates.

Especially following the disclosure of Malik, which desires limited modification of the compositions disclosed therein, one having ordinary skill in the art would not have been motivated to combine the diverse disclosures of Malik and Hagan. Moreover, even if the disclosures were combined, such combined composition would have a higher total surfactant concentration than that recited by Applicant.

Malik does disclose beginning at the bottom of column 6 that the viscosity can be modified with viscosity modifying agents. However, even if such viscosity modifying agents are included in the composition of Malik, there is no indication in Malik or any combination of Malik with Hagan of a composition as recited by Applicant.

Accordingly, the compositions and methods recited in Applicant's claims are not taught or suggested by any combination of the prior art used in the rejection.

Moreover, Furman is used rejecting certain claims only for its disclosure of cocoamide MEA. Therefore, whether or not one would have combined the disclosures of Malik, Hagan and Furman, Applicant's claimed subject matter would not be at hand at least for the reasons set forth above.

Still further, Scholz is used in rejecting certain claims only for its disclosure of thickeners, particularly exemplified montmorillonites. Therefore, whether or not one would have combined the disclosures of Malik, Hagan and Scholz, Applicant's claimed subject matter would not be at hand at least for the reasons set forth above.

Accordingly, the rejections of record should be withdrawn, and each of the pending claims should be indicated to be allowable.

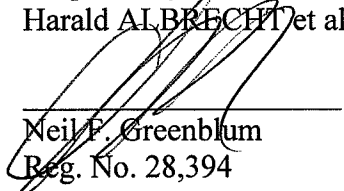
**CONCLUSION**

In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections of record, and allow each of the pending claims.

Applicant therefore respectfully requests that an early indication of allowance of the application be indicated by the mailing of the Notices of Allowance and Allowability.

Should the Examiner have any questions regarding this application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
Harald ALBRECHT et al.



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